[ORIGINAL CIVIL JURISDICTION]

HADJEE DAING PETIPAK BIN WAK LUNDOK.

VS.

HADJEE RIOK BIN LAHAMAT.

[BATU PAHAT CIVIL SUIT No. 6/32]

[JOHORE CIVIL APPEAL No. 4 of 1932]

Verbal agreement to purchase land held under Surat Sementara title—Sale by owner to another, purchaser taking with notice of agreement—Caveat under Land Enactment 1910—Land Rules 1929.

A. verbally agreed to sell to *B.* land covered by a Surat Sementara. The purchase price was paid in full but no Memorandum of Transfer was executed. *B.* instituted an unsuccessful action against *A.* for specific performance and appealed against the judgment. Whilst the appeal was pending *A.* purported to sell the land the subject of the dispute to *C.* and a Memorandum of Transfer was duly executed and registered. In an action by *B.* against *C.*

Held, that, as *C.* had purchased with notice of a trust affecting the property, the transfer of the land afforded him no protection.

The following facts were stated in the Plaint and were admitted:—

(1) On the 2nd day of Sa'afar 1336 corresponding to the 1st day of August, 1927 the plaintiff entered into a verbal agreement with Tualak bin Daing Palawah whereby the said Tualak agreed to sell to the plaintiff 5 acres of land at Sungei Besar, Benut, comprised in Surat Sementara No. 558/14 for $1,800. The Plaintiff paid the said sum of $1,800 but the said Tualak refused to execute a Memorandum of Transfer of the said land.

(2) The Plaintiff took proceedings against the said Tualak before the Collector of Land Revenue, Batu Pahat. No result was arrived at, but, during the course of such proceedings, the defendant gave evidence as a witness on the said Tualak's behalf.

(3) Plaintiff brought an action in this Court against the said Tualak for specific performance. The case was heard on the 4th February 1931 and judgment was delivered in favour of the said Tualak.

(4) The Plaintiff was in possession of the said land and received the produce thereof from the date of the said agreement up to the 6th day of October 1930.

(5) The Defendant was in Court during the trial of the said action but did not give evidence.

(6) On the 9th February 1931 the plaintiff gave notice of appeal.

(7) On the 8th March, 1931 the said Tualak purported to sell the said land to the defendant and a Memorandum of Transfer was drawn up and signed and registered. The purchase price shown by such transfer to have been paid by the defendant was $2,500 and notwithstanding that the defendant had knowledge of the Plaintiff's claim the purchase price amounted to more than 3 times the then value of the said land.

(8) The Plaintiff's appeal was heard on the 4th May, 1931 and a new trial was ordered.

(9) The new trial was heard on the 3rd and 4th days of February, 1932 and the judgment was given in the plaintiff's favour for specific performance. The action was tried before Burton, J. on the 19th May, 1932.

BURTON, J.—The facts in this suit are admitted.

On February 4th 1932 I gave judgment in a suit between the present plaintiff and Tualak declaring that Tualak had agreed to sell the land held under Surat Sementara No. 558/14 in the Mukim of Benut, and had received the purchase money $1,800. The judgment has not been appealed against and stands. It was given in pursuance of an order of the Court of Appeal setting aside a judgment of Thorne, J.'s on the ground of misdirection and ordering a re-trial.

On February 4th 1931 Thorne, J. gave judgment in favour of Tualak; his judgment was to the effect that the transaction between the parties was in the nature of a loan and that there was no contract to sell the land. At the time of the judgment Tualak was the recorded owner of Surat Sementara No. 558/14. But on 8th March, 1931 he transferred the land to Hadjee Riok the present defendant.

The contention of Mr. Cobbett was that as my judgment declares that the plaintiff bought and paid for this land, Tualak by neglecting to execute the necessary conveyance had become a bare trustee of the plaintiff. The words of Jessel. M.R. in *Lysaght* v. *Edwards*, L.R. 2 Ch. D. 1876 at page 506 make this quite clear.

> "It appears to me that the effect of a contract for sale has been settled for more than two centuries; certainly it was completely settled before the time of Lord Hardwicke, who speaks of the settled doctrine of the Court as to it. What is that doctrine ? It is that the moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase money, a charge or lien on the estate for the security of that purchase money, and a right to retain possession of the estate until the purchase money is paid, in the absence of express contract as to the time of delivering possession."

Tualak had nothing but the legal estate. Neither in my opinion could the present defendant take more than the legal estate. He knew of the claim of the plaintiff to this land. When Thorne, J. gave judgment in favour of Tualak, the defendant took a transfer of the land while an appeal was pending without taking the trouble to find out whether or not Petipak had appealed or intended to appeal. Thorne, J.'s judgment would have become absolute after one month if no appeal had been filed, but during that one month the judgment was not absolute and could be attacked. It is true that an appeal does not operate as a stay of execution, but an appeal re-opens and prolongs the dispute between the parties.

It was not alleged that the defendant knew of the appeal. But he did know of the dispute and the right of appeal and he took the transfer without inquiring. He took the transfer therefore knowing that there was a possibility of his vendor's title being defeated by adverse decision of the Court of Appeal. There was in other words an equity outstanding in favour of Petipak, and defendant had failed to get it in. He ignored it. If the appeal had failed, the equity would have disappeared, but the equity remained alive and by the success of the appeal and the subsequent judgment this equity crystallised, and consequently defendant's title is subject to it. He is therefore a bare trustee of the land for the Plaintiff.

I think there must be judgment for plaintiff in terms of prayers (a) and (b) of the plaint with costs.

Immediately after this judgment was delivered a caveat was entered against the Surat Sementara by the Collector of Land Revenue at Batu Pahat on the plaintiff's behalf.

The defendant appealed on the grounds that the finding that mere knowledge of dispute and a right of appeal constituted constructive notice of a trust and was sufficient to put him on enquiry was wrong and that it should have been held that the plaintiff had been guilty of laches in not applying for a stay of execution at the hearing before Thorne, J. and not lodging a caveat against the property.

The appeal was heard on the 11th July 1932 before Murison, C. J. and Whitley, J.

Demuth with *Osborne-Jones* for appellant.

Cobbett for the respondent.

Demuth. Tualak had been in possession since the enquiry before the Collector of Land Revenue and remained in possession until he transferred to appellant.

It was open to respondent to caveat the property immediately after Thorne, J.'s judgment had been set aside. He could also have gone to the Court in order to get the property protected. He contented himself with giving notice of appeal as if mere notice of appeal operated as a stay of execution.

Appellant before purchasing consulted the Collector of Land Revenue as it is on the record that he also made a search in the registry as a result of which he discovered no impediment by way of caveat, attachment, order of Court or otherwise to the purchase of the Land. It was not alleged that he knew of the appeal. He consequently purchased without any substantial incumbrance affecting the land.

Cobbett contra. No stay of execution of the judgment of Thorne, J. would have been allowed. Under the Land Enactment, 1910 and rule 7 vi. (c) of the rules made thereunder in 1929, it was not open to the Plaintiff to file a caveat.

Demuth in reply. It is the practice in Batu Pahat to allow caveats on Surats Sementara. The Land Rules do not apply, Surats Sementara being entirely outside the Land Enactment.

Respondent managed to get a caveat on the Land after Burton, J's. judgment. He appears never to have tried to get one when the Court of Appeal set aside Thorne J's decision. There is no reason why if he could get it in the one case, he should not have been able to get it in the other.

The following authorities were referred to on the question of the notice of trust:—

Lysaght v. *Edwards*, (1876) Ch.D. 499.
Hadley v. *London Bank of Scotland*, 46. E.R. 562.
Butcher v. *Stapley*, 23 E.R. 524.
Oliver v. *Hinton*, (1899) 2. Ch.D. 264.
Jared v. *Clements*, (1903) 1. Ch.D. 428.
Bursot v. *Savage*, (1866) 2 Eq. 134.

The appeal was dismissed with costs the Court holding on the authority of *Jared* v. *Clements* (*Supra*) and other cases referred to that the appellant had purchased with notice of a trust and that there was an equity outstanding which had not been got in. (Per Murison, C.J. the plaintiff could not have obtained a stay of execution and without deciding whether the plaintiff could have filed a caveat or not the plaintiff was not guilty of laches as there appeared to be no duty on him or his solicitors to file a caveat.)

Appeal dismissed.

Solicitor for Appellant—*D. G. Osborne-Jones.*
Solicitors for the Respondent—
Rodyk & Davidson.

Straits Settlements

Court Calendar, 1933.

SINGAPORE

ASSIZES

Monday - -	January - - -	9th
Wednesday -	March - - -	1st
Monday - -	May - - -	1st
Monday - -	July - - -	3rd
Monday - -	September - -	4th
Wednesday -	October - - -	25th

COURT OF APPEAL

Monday - -	June - - -	12th
Monday - -	November - -	13th

PENANG

ASSIZES

Tuesday - -	January - - -	10th
Wednesday -	March - - -	1st
Tuesday - -	May - - -	2nd
Tuesday - -	July - - -	4th
Tuesday - -	September - -	5th
Wednesday -	November - -	1st

COURT OF APPEAL

Friday - -	February - -	17th
Friday - -	August - - -	18th

MALACCA

ASSIZES

Monday - -	February - -	6th
Monday - -	April - - -	3rd
Wednesday -	June - - -	7th
Wednesday -	August - - -	9th
Monday - -	October - - -	2nd
Monday - -	December - -	4th

JOHORE

COURT OF APPEAL

Monday - -	March - - -	27th
Wednesday -	June - - -	7th
Monday - -	September - -	25th
Monday - -	December - -	11th

KEDAH

COURT OF APPEAL

Saturday - -	February - -	18th
Saturday - -	August - - -	19th

The Malayan Law Journal

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NOTES.

Motor Vehicles Bill.

This year has seen a very unusual spate of legislation and proposed legislation. Among the latest examples is a Motor Vehicles Bill which has just been printed in the Gazette of November 18th, 1932. This bill in its present form is a fair illustration of the difficulty attaching to the drafting of a bill by draftsmen who are out of touch with the actual practice of the profession.

The bill is of course based upon the Road Traffic Act 1930 which it follows very closely in most of its provisions.

It is however a fact that during last year the Road Traffic Act 1930 has been subject to considerable criticism and a number of loopholes have been discovered in that Act. In the draft Ordinance proposed for this Colony no attempt has been made to provide against these loop-holes.

One serious difficulty is as follows. Third party insurance is to be made compulsory. A policy of insurance is effected by an insured with an insurance company. Before the contract is concluded between them every material fact and circumstance which is known to the assured must be disclosed to the insurer. If the insured fails to make such disclosure the insurer may avoid the contract. Indeed contracts of insurance of every kind are of the special class seriously affected by non-disclosure.

It would seem quite clear that if the insured fails to disclose material facts to the insurance company, since the contract can be avoided, the third party will have no protection at all.

Insurance companies almost always ask, before entering into a policy, whether the intending insurer has had previous accidents or not. It is to the interest of the assured to answer this question in the negative as this reduces the premium. This would seem to be a quite material circumstance and it is quite likely that an untruthful answer or non-disclosure on this question might avoid the whole policy. There are other loopholes in the Road Traffic Act 1930. One of these is dealt with in the Law Journal Newspaper of September 3rd, 1932.

* * * * *

Praying a Tales.

On the 7th November, 1932, in the Assize Court at Singapore before Mr. Justice Whitley at the trial of Khor Teng Quee on several charges of forgery, a very rare opportunity arose for praying a tales. Lawyers with a tenderness for the finer points of their profession might regret that the opportunity was not seized upon. A Special Jury had been summoned and duly impanelled but all the jurors in waiting had been released as the case was expected to take a considerable time (which in fact it did). The trial was commenced and the proceedings were well under way when it was discovered that one of the jurors might possibly be indirectly interested personally, so the Judge formally discharged the juror and the case was begun over again. This left only 6 jurors available, an additional one being necessary to form a quorum, but as all the waiting jurors had been dismissed an extra juror could not be called up in the ordinary way. It is in exactly such circumstances as these which give the opportunity to Counsel to pray a tales. In the case mentioned it was thought inadvisable to do so. The case was adjourned until the afternoon and further special jurors were summoned. Out of them one was drawn in the ordinary way the jury was resworn and the case recommenced. It is to be feared that there are lawyers do not know the meaning of the expression "praying a tales." "Tales" is of course short for "*Tales de circumstantibus*" and a juror so commanded from the bystanders is known as a talesman. In Vol. 10 of the Revised Statutes of England at p. 58, Section 37 of the Juries Act, 1825, is set out in full, and this shows the position clearly. "*Tales de circumstantibus*" means "sufficient duly qualified men from the bystanders." The English provisions on this subject are repeated for all practical purposes in Section 189 subsection (d) of the Criminal Procedure Code wherein the words used are "so many of the bystanders as are sufficient to make up the full number thereof."

* * * * *

Alternative Charges for Separate Offences.

A misjoinder of charges in the alternative, which proves fatal to a prosecution, frequently arises from the failure to observe the difference between charging offences in the alternative and charging that a man may by an act have committed two offences.

In *Rex* v. *Wells*, (1904) 68 J.P. 392 the defendant was charged with driving at a speed *or* in a manner which was dangerous to the public. The conviction was quashed on the ground that two separate offences were charged in the alternative. In *Rex* v. *Jones; Exparte Thomas*, (1921) 1 K.B. 632, however, the charge was one for "driving recklessly *and* at a speed which was dangerous to the public." It was held that the defendant was rightly convicted, as the act of driving was one indivisible act and constituted one offence.

The effect of the rulings in these cases was considered and applied in *The King* v. *Surrey Justices; Exparte Witherick*, (1932) 1 K.B. 450. where the appellant was convicted by the Justices on an information charging him under S. 12 (1) of the Road Traffic Act, 1930, with driving "without due care and attention *or* without reasonable consideration for other persons using the road." The Court, being of the opinion that the section created two distinct offences which could not be charged in the alternative, quashed the conviction. Avory, J., in his judgment points out by way of illustration that a man may be driving with due care and attention, so far as his own safety is concerned, and yet may be driving without reasonable consideration for other persons. Commenting on the conviction, he further says:—

> "It is an elementary principle that an information must not charge offences in

the alternative, since the defendant cannot then know with precision with what he is charged and of what he is convicted and may be prevented on a future occasion from pleading *autrefois convict.*"

* * * * *

Registration of Title.

We are informed by a member of the Bar that some time ago Government printed a memorandum and draft Bill, relating to the registration of title to land and drawn by Mr. F. T. Tree, but upon inquiry it seems that these documents have not yet been sent to the Singapore Bar Committee for their opinion, notwithstanding the fact that the resolution passed at the last annual general meeting of the Bar was sent to the Hon'ble the Attorney-General. It is difficult to understand why the present memorandum and draft Bill have not been sent to the Bar Committees of the Colony for comment, particularly as members of the Bar practising as conveyancers, many of whom have actually practised in countries where there is registration of title to land, are clearly the obvious persons to consult. It can hardly be considered as surprising that the Bar Committees should move in matters before receiving direct communication from Government, when it is found as in the present case that a draft Bill has been not only drawn but printed and circulated, though to what extent is not known. The only result of procedure such as this is to encourage the present lack of confidence in the manner in which important matters are considered before being placed before the legislature.

* * * * *

Stamp Objections.

Recently a case came before the Court in which certain re-acceptances of Bills of Exchange had not been stamped. Objection, we understand, was taken to their admissibility. The position with reference to Professional Etiquette as to stamp objection is well settled. The 1933 issue of The Annual Practice at p. 2625 states the position as follows:—

> "It is unprofessional that counsel should object to the admissibility of any document upon the ground that it is not, or is not sufficiently stamped, unless such defect goes to the validity of the document.
>
> "Counsel should not take part in any discussion that may arise in support of any objection taken on the ground aforesaid, unless invited to do so by the Court."

There can be little doubt that this ruling correctly states the position in England and that it might with advantage be adopted and followed in the Colony.

* * * * * *

LEGAL PERSONALIA AND NOTES.

Mr. Justice P. J. Sproule, Senior Puisne Judge of the Supreme Court, Straits Settlements, is due to return to the Colony some time in February next. His Lordship will resume duties as Judge of the Supreme Court at Penang. This will be his last term of office prior to retirement.

* * * * *

It is reported that Sir Lancelot Elphinstone late Chief Justice of the Federated Malay States has taken up Chambers in London. Sir Lancelot specialises in appeals to the Privy Council from Malaya.

* * * * *

The Hon. Mr. Justice N. D. Mudie who until recently was at Kuala Lumpur left for England on leave on 15th November last.

* * * * *

Mr. W. C. Taylor, Acting Registrar of the Supreme Court at Penang, has been transferred and is now attached to the Attorney-General's Department. Mr. R. Moor, formerly Deputy Treasurer, Penang, has taken his place as Registrar.

* * * * *

Mr. F. A. Briggs, Barrister-at-Law, of the firm of Messrs. Bannon & Bailey, Kuala Lumpur, has joined Messrs. Braddell Brothers, Singapore.

* * * * *

Mr. G. W. Webb, M.C.S., has been gazetted to be a Police Magistrate for the Settlement of Singapore.

* * * * *

Mr. B. A. Mallal, Editor of the Malayan Law Journal, left Singapore on 24th November for a short holiday in Japan on medical advice.

* * * * *

DEATH OF MR. G. C. DODD.

(The Passing of a "True English Gentleman")

It is with extreme regret that we record the death of Mr. George Christopher Dodd, M.C.S., who passed away at the General Hospital, Penang, on the 18th of November last, at the early age of 42, after a short illness.

Mr. Dodd contracted influenza which developed into pneumonia and in spite of all the efforts of his doctors he took a turn for the worse.

Mr. Dodd, socially was of a very retiring disposition but he was held in the highest esteem by all those who came in contact with him

officially and unofficially. The best that could be said of Mr. Dodd is that he was a "true English" gentleman who was an ornament to the service and the Bench which he graced during his later years. During his Magistracy in Singapore, Penang and Malacca, he dispensed justice tempered with kindness and was loved as an extremely fair and impartial judge. He was a very lovable character and his untimely passing has left a gap in the Malayan Civil Service which will be extremely difficult to fill. A man of few words his Judgments were sound and invariably upheld in the Higher Courts.

Mr. Dodd was born in 1890 and came out to the Colony as a cadet in December, 1914. He was successively attached to the Government Monopolies and the Chinese Protectorate, Singapore, before proceeding to Amoy to study Chinese for two years.

Upon his return he was again attached to the Chinese Protectorate, Singapore. In December, 1919, Mr. Dodd first went to Malacca as Assistant Superintendent of Government Monopolies and Assistant Protector of Chinese. For a time he was Acting District Officer, Christmas Island, and returned to Malacca as Acting District Judge and Registrar of the Supreme Court in 1927.

Mr. Dodd was called to the Bar in May, 1930, and commenced duty as Acting District Judge and First Magistrate, Singapore, in January, 1931.

PUBLICATIONS RECEIVED.

Mitra's Law of Limitation and Prescription (in British India) including Easements. Vol. I (Tagore Law Lectures—1882) and Vol. II (Commentaries on the Limitation Act (IX of 1908). 6th Edition. By S. Panchapagesa Sastri assisted by V. K. Srinavasa Iyengar and K. S. Champakesa Iyengar, B.A., B.L. 1932. Madras Law Journal Office. Rs. 22 nett.

The Civil Court Manual (Imperial Acts) (Brought up to end of October 1931). 3rd Edition Vols. 1 & II, 1932. Madras Law Journal Office. Rs. 22 nett.

Law of the Straits Settlements, Vols. I & II. 2nd Edition. By Roland Braddell of Middle Temple, Barrister-at-Law; Advocate & Solicitor of the Supreme Court, S.S. 1932. Kelly & Walsh, Ltd. Price per set $25 – nett.

Common Gaming Houses. A Commentary on Ordinance No. 45 (Common Gaming Houses) 2nd Edition. By Roland Braddell of Middle Temple, Barrister-at-Law; Advocate & Solicitor of the Supreme Court, S.S. 1932. Kelly & Walsh, Ltd. Price $5/– nett.

Dhar's Practice & Procedure in Criminal Cases. 4th Edition. By Jajneswar Majumdar, M.A., M.L., Advocate & Solicitor, High Court, Calcutta. 1931. M. C. Sarkar & Sons. Rs. 3 As. 12 nett.

Prosecution in False Cases. By Rai Prasanna Narayan Chaudhuri Bahadur, B.L. First Edition. M. C. Sarkar & Sons, Calcutta. 1932. Rs. 4 As. 8 nett.

Bail & Recognizances in Criminal Cases. By B. K. Basu, B.L. 1932. M. C. Sarkar & Sons. Rs. 3 As. 8 nett.

LAND ACQUISITION ORDINANCE.

Another attempted encroachment of the bureaucracy is to be noted in the new draft Ordinance just published in the Government Gazette containing a bill with proposed amendments of Ordinance No. 49 (Land Acquisition). This makes several important amendments to the principal Ordinance all of which are, as might be expected, very definitely in favour of the Crown (or perhaps more properly speaking the bureaucracy) as against the subject. The first point of importance appears to be a provision that the time limited by section 18 of the principal Ordinance for a reference to the Court at the instance of a person interested (that is to say, the time for appeal from the Collector's award) "shall not be capable of enlargement by order of any Court."

During the past few years applications for enlargement of time have occasionally been granted by the Supreme Court. One example is the case of Chia Yew Siang reported on page 149 of S.S.L.R. 1930. Successful applications have only been very few and it cannot be pretended that there has been any abuse of the right of application to the Court for extension of time in exceptional cases. In every case the applicant has of course had to show substantial reasons for the enlargement of time otherwise no such application has been granted. It does not seem that any injustice or grave hardship has thereby been inflicted upon the Crown; on page 152 of the report mentioned above it is stated "It is not disputed by the Solicitor-General that this is a proper case for the exercise of the power" (of enlargement of time).

The objects given by the Objects and Reasons of the Ordinance are as follows:—

> "to effect an early termination of litigation and an early ascertainment of the compensation to be paid: in a recent case the time for appealing was extended by over two years by order of Court; so long an extension might be highly inconvenient to the Government who may wish to withdraw from the acquisition unless the sum to be paid falls within a certain figure."

The Government therefore put their case for this amendment on the ground of inconvenience to Government.

As between a grave injustice to the individual and a slight inconvenience to the Government readers of this article will hardly have two opinions. Two years extension is obviously a very unusual time; no doubt some very good reasons must have been adduced to the Supreme Court for such an unusually long extension. The Supreme Court does not regard extensions of time with a very kindly eye. It has been laid down by the Court of Appeal in England on this subject "that when the Rules and the Act of Parliament say that an appeal is to be within a certain time unless special leave shall be given by the Court of Appeal to appeal after that time, the Court does not grant leave unless there is something which in the opinion of the Court entitles the person who applied for extension of time to be relieved against the bar established by the Orders and the Acts of Parliament" (Re *Manchester*

Economic Building Society, 24 Ch.D. at p. 499). The amendment now proposed is in fact merely an attempt to make acquisition easier for the Crown and the Collector and to press more hardly on the subject. It must be remembered that it is perfectly easy under Ordinance 49 for the Crown to acquire land without the owner knowing anything whatever about the acquisition or the award; for service of the notice can be effected in many cases merely by fixing a copy in the office of the Collector and also on some conspicuous part of the land to be acquired (Section 50).

With regard to section 2(a) of the proposed amending Ordinance this is a proposed amendment of section 18 sub-section (2) which reads:—

> "The application shall state the grounds on which objection to the award is taken."

The proposed new sub-section is as follows:—

> "(2) The application shall state fully the grounds on which objection to the award is taken and at the hearing no other grounds shall be given in argument without leave of the Court."

The writer does not understand the word "fully" in this subsection. The ordinary requirements for a civil appeal are (as set out in the Civil Procedure Code), "The Memo. of Appeal shall set forth concisely and under distinct heads, the grounds of objection to the decision appealed against, specifying the points of law and fact which are alleged to have been wrongly decided."

This section does not use the word "fully" and it seems to the writer that this is a very unfortunate word to use. In this connection such words as "specifically" or "particularly" are well understood; they are absolute words, not words of degree. How full does "fully" mean? It would be difficult under this proposed section to say what grounds are or are not full enough.

Section 35 again is proposed to be amended. This now provides *inter alia* that every Appeal from the Supreme Court to the Court of Appeal shall be presented within the time and in manner prescribed for appeals to Supreme Court. The following amending proviso is now proposed:—

> "Provided that the time within which an appeal may be presented shall not be capable of enlargement by order of any Court."

This puts the matter very clearly indeed. In all civil cases the Court of Appeal can at present in its discretion extend the time for appealing if there are sufficiently good grounds for it. This discretion is jealously guarded and leave to appeal out of time is only given in exceptional cases, that is to say, it is not given unless there is some likelihood or possibility of a grave injustice being done. The proposed amendment would place the Crown (that is to say, the bureaucracy) in a special unique privileged position in respect of appeals under this Ordinance. They would be exempted from the position of an ordinary litigant, however great an injustice might thereby be perpetrated upon a would-be appellant.

Will no one protect the rights of the public against these encroachments of the bureaucrats?

J. L.

LAWYERS AND LITERARY MEN.

The writer has been approached by the Editor and by a member of his board to contribute from time to time some articles of potential interest to the legal profession to this journal. He was at a loss for some time as to the kind of subject he should deal with, as indeed he still is. It occurred to him however, that a series of articles on the above subject would not be out of place. As members of a profession of tradition and distinction which has contributed no small part to the building and to the greatness of Britain, we are too inclined as a body to dwell upon the greatest *legal* luminaries in the history of our profession and also very prone to pass over equally distinguished ornaments whose work as lawyers indeed was by no means small but who in a different connection, not wholly unallied with Law, were distinguished literary men. The writer has therefore decided with the benison of the Editor to contribute a series of articles to this journal dealing with the lives of certain lawyers who were very distinguished literary men. Two of these have a particular claim upon our attention and the celebration of the centenary of the death of one of them has just been held. The one is Henry Fielding the distinguished English Novelist and the "father of the English novel"; the other is Sir Walter Scott an equally distinguished novelist and eke a poet. The latter with Burns comprises the most distinguished Scotsman who ever lived.

Following the sage advice of a famous English Judge —Lord Ellenborough—that order was always important and that in legal matters "Chronological Order was best" and also the pithy remark of Sterne in Tristram Shandy —"I must now bring up the affairs of the Kitchen" we will deal with the life of Fielding first, he having predeceased the Scottish minstrel by well nigh a century. Scott will be dealt with in due course and it is hoped fittingly and while the centenary year of his death is still unexpired. There will of course be other cases, too, to be dealt with but these two have particular claims on our attention.

HENRY FIELDING.

There is an eloquent passage in Gibbon which may serve as a happy proem to this short article dealing with Fielding's life. Here it is:—

> "Our immortal Fielding was of the younger branch of the Earls of Denbigh who drew their origin from the Counts of Hapsburg the lineal descendants of Eltrico in the 7th century Duke of Alsace. Far different have been the fortunes of the English and German divisions of the family of Hapsburg: the former knights and sheriffs of Leicestershire, have slowly risen to the dignity of a peerage; the latter the Emperors of Germany and Kings of Spain have threatened the liberties of the Old and invaded the treasures of the New World. The successors of Charles V may disdain their brethren in England; but the romance of *Tom Jones*—that exquisite picture of humour and manners—will outlive the palace of the Escurial and the Imperial eagle of Austria."

Henry Fielding was the son of another of the same name. The latter in turn was the youngest son of the Earl of Desmond who was a grandson of the Earl of Denbigh. Henry was born in 1707 at Sharpham Park near Glastonbury in Somersetshire. The father of our hero, Captain Fielding, is said to have distinguished himself as an officer under the famous Duke of Marlborough in his campaigns in Europe in the latter portion of the Seventeenth and the earlier portion of the Eighteenth century. Details as to the father's movements at this time are very scanty just as are those of the first twenty years of the novelist's life. A few facts however are ascertained. Henry Fielding was sent to Eton where he spent a few years. His father appears to have been a rather generous host and given to considerable entertainment. When the time came for young Henry to proceed to one or other of the older English Universities, it is not improbable that his father's finances would not stand it. Instead of proceeding to Oxford he was sent to the University of Leyden—then as now reputed to have the finest law school in the world. Notwithstanding our rightful pride in the greatness of our system of Law, we must not forget that Holland once led the world in law for a great many years. The country that produced Erasmus to mention but one name amongst many other

distinguished ones deserves at least a passing allusion. There was little indication in his early years of the genius that was to evidence itself in him at a later period.

He remained at Leyden University for two years and on his return to England he brought with him his first literary effort—a comedy "Don Quixote in England" evidently written while at Leyden; but it was not accepted till 1734. It is a matter for notice that among his school friends were Lyttleton and Pitt and with the former, a poet, Johnson was later to take notice of, he was particularly friendly.

The natural goal for Fielding now was the Bar; but he was thwarted and delayed in his efforts to be called by his poverty. He had no option but to turn to writing and that for the stage.

His "Don Quixote in England" was not a success and Booth and Collyer Cibber when shown it commented unfavourably upon it. Fielding was to wipe this sore off later when he burlesqued these critics. Success came in 1728 in his comedy "Love in several Masques." It was performed in February of that year at Drury Lane and it became the talk of the town. Ten years after his reputation as playwright was established. Some of his other plays are as follows:—The Temple Beau (1730). The Author's Farce (1730), The Coffee House Politician (1730), Tom Thumb the Great (1730), The Letter Writers (1730), Grub Street Opera (1731), The Lottery (1731), The Modern Husband (1732), The Covent Garden Tragedy (1732), The Miser (1732), Don Quixote in England (supra) and several others. The best known of the plays is "The Miser." Fielding also became a stage manager and organised the Great Mogul Company which culminated in dramatic censorship.

The plays are of course little read and in consequence their reputation suffers. A critic has said of them that they were rapidly considered and constructed but not ill considered nor ill constructed. The moral tone of the plays is exactly in keeping with that of "Tom Jones" and such other writers of the time as Smollett and Sterne. Fielding had little time for the godliness and goodness exhibited in the works of Addison and Steele.

Fielding entered into wedlock in 1737 and married a Salisbury beauty, a Miss Cradock. She brought him dowry of £1,500/- which the author soon squandered. This year is an important one too in our hero's career for during it, he joined the Middle Temple. Whilst reading for the bar he produced three times a week a political journal called "Champion" in which he attacked the politicians of the day notably the great Sir Robert Walpole.

In 1740 he was called to the Bar by the Middle Temple and went the Western Circuit. This circuit mess he was later to give exquisite pictures of in his bigger works like "Tom Jones" and "Joseph Andrews." He worked very hard at law and for briefs; but none came and he was thrown back again upon writing for his living. In 1740 literary and reading England was deeply interested in a new publication by Richardson called "Pamela." It was a new departure in writing and somewhat off the beaten track. It was read by almost everyone who could read. It's heroine is a somewhat virtuous lady—in fact excessively so. For instance she a servant resists the advances of her master. Her resistance is sustained in the secret hope of an offer of marriage. This gave Fielding his chance and the world in 1742 became the richer by the production of his first great work "Joseph Andrews." It was a parody on Pamela and indeed burlesqued it. But as the writer proceeded he and the literary world became conscious of the production of a new form of literature. It became almost as famous as "Pamela" and Fielding received £200/- for it. In parts it was particularly cruel in its references to Richardson's heroine and Fielding described the novel as being written "in the manner of Cervantes" and his other description of the work as "a comic prose epic" has been acclaimed as being the best criticism of it.

Fielding's wife died in 1743. She was a lady to whom he was much devoted and in the course of time he married his wife's maid a woman of much sense and devotion and as devoted to his late mistress as was her late master now her husband. Now Fielding had a good companion and nurse; for his health was beginning to give way.

He tried his hand at some further playwrighting, but they do not call for particular comment. They were no successes and Fielding's own creation the Lord Chamberlain of dramatic censorship and the enemies he had now made in Grub Street and among the critics by his satire and wit contributed much to his failure. The year 1744 marks the close of Fielding's connection with the theatre.

Fielding was meantime engaged in political journalism and was connected with a journal called the "Jacobite" and was said to be in the pay of the government of the day. He next published his history of "Jonathan Wild the Great" and "A Voyage from this World to the Next." This work gives a very clever picture of the conversation of the traveller with the eminent dead in the shades and its satire is remarkable.

But Fielding's ultimate fame must and will rest, as Gibbon pointed out, on his immortal work "Tom Jones" which was published in February 1749. The book is too well known to call here for even a short description. Few however who have read it will ever forget its beautiful picture of eighteenth century manners, its grim satire, its exquisite humour and its polished cynicism. Many expressions in it have become proverbial and others actually classical. An example of the latter may now be quoted. It will be remembered that at Squire Western's Table were two famous personages; one the Reverend Mr. Thwackum a clergyman of the Church of England and the other Mr. Square a professed free thinker. The discussion turned on Religion and in reply to Mr. Square's question as to which of the various religions of this earth was he referring to, the Reverend Cleric made the now famous reply:—"Sir, when I speak of Religion I mean the Christian Religion; and not only the Christian Religion but the Protestant Religion and not only the Protestant Religion but the Church of England Religion." Few will deny the truth of this form of intolerance to this day. Another brilliant example of Fielding's humour may be set down here. As referred to earlier the author was related to the Earls of Denbigh. The Earl of Denbigh of the author's day invited the latter to stay with him at his ancestral seat. After dinner, while the author was closeted in the nobleman's library, the nobleman expressed his pleasure to the author of making the acquaintanceship of so distinguished a member of his family. He asked Fielding, however, what was the explanation of the different ways of spelling the family name, "You Mr. Fielding and your family always spell the name "F I E L D I N G," whereas I and my family always spell the name "F E I L D I N G," The author then observed: "I was probably, My Lord, the first member of the family who could spell properly."

Some of the characters in "Tom Jones" are famous: for instance Squire Allworthy, Squire Western, Sophia Western, Tom Jones, Mr. Thwackum, Mr. Square and many others. Squire Western is the pattern of the English gentleman and Sophia Western of beautiful womanliness. Space could never allow any writer to do adequate justice to this famous book in an article like the present. Many good things may be said about it. One of the best is

that it gives such a perfect picture of Eighteenth century England. Another nearly as famous a novel of Fielding's is "Pamela."

In the year 1748 he was made Chief Magistrate for the county of Middlesex and in this office he delivered a famous charge to a jury which still repays re-reading. He is said to have secured this post by reason of his friendship with the aforementioned Lyttleton who had influence with the Government of the day. However that may be, he made an exceedingly able, learned and humane Magistrate and by reason of his observations and enquiries and experience materially assisted the Government of the day in its reform of the Criminal Jurisprudence of that time. But our hero was now becoming a sick and weaker man owing to his laborious sedentary life and his early struggle for existence. Although he did well for that time out of "Tom Jones" he had many debts to pay, for he lived a luxurious life and the stipend accruing from the Magistracy, although a boon now, had come too late. He became sick and suffered much from dropsy for which no cure could be found. He took the waters at Bath but this was unavailing. He was about to take a sea voyage but was detained by the Government upon some important work in London in connection with the administration of the Criminal Law, a task he successfully performed. He then went on his famous voyage to Lisbon and his journal written on this voyage makes a poignant reading although the author to the end maintained his robust cheerfulness and good humour. After some time at Lisbon he grew worse and his days came to their end on the 8th day of October, 1754. He was one of the greatest of our English novelists and without doubt gave the novel that literary and artistic form from which our subsequent famous novels have been developed. He is rather forgotten by lawyers today and as far as the writer knows there is no portrait or bust to him in the Middle Temple; but as Gibbon said "Tom Jones" alone has secured immortality for the name of Henry Fielding.

It would not be inappropriate at this stage to remind the reader that some weeks ago, there resigned from the Bench of the Old Bailey the last surviving son of Charles Dickens another and an even greater English Novelist. Sir Henry Dickens the Common Sergeant of the city of London Court is of course here referred to. His name in full is—Henry Fielding Dickens and Charles Dickens named his son after the subject of this article—an author Dickens loved and had studied carefully.

Fielding's bones do not rest in his native land. He was buried as was Shelley and as in the heart of Byron in a foreign land. Fielding's tomb may be seen in the Protestant cemetery at Lisbon. Part of the epitaph is in Latin and makes a poignant reference to the writer's place of rest being on a foreign strand.

Luget Britannia non gremio dari fovere.

D.

IN LIGHTER VEIN.

GOT IT WRONG.

There was a rift in the matrimonial relations—to be frank, husband and wife could not agree.

The woman applied to the court for a separation order and maintenance, but the cautious magistrates first tried to strike a happy solution by letting the court missionary have a chat with the respective parties.

Alas! he failed and the case came back for the magistrates' decision, which was duly announced by the chairman, who said: "We have decided to give your wife thirty shillings a week."

"And I will give her a few shillings myself," said the husband brightly.

A DOLLAR A MONTH.

In a Singapore Court the other day appeared three Chinese charged with robbery. The robbers from their stand in the dock pleaded guilty and scowled in ugly fashion at the complainant.

"How much shall I give them," asked the Judge of the complainant.

Studying the men in the dock and then looking down on his bared chest which bore marks of violence the complainant replied, more in sorrow than in anger, "give them six months each, they robbed me of six dollars."

"What a dollar a month! He is probably right—tell him I will remember that in passing sentence," the Judge jocularly replied.

REVIEWS.

The Law of the Straits Settlements. Second Edition. By Roland St. John Braddell of the Middle Temple, Barrister-at-Law; Advocate and Solicitor, Singapore: Kelly & Walsh Ltd. 1931. 2 Volumes ($25/- net).

A new edition of this standard work is very welcome, not only to members of the Bar but to students of comparative jurisprudence. During the sixteen years which have elapsed since the first edition was published many cases of importance have come before the Courts and the laws of the Colony have shown a continuous development, not the least being the two revisions of the Ordinances. The subject has therefore called for first treatment, and this it has in the new edition received from Mr. Roland Braddell, whose learning and long experience at the Bar have given him an intimate knowledge of the subject.

The present edition is published in two volumes, the first of which in general covers the same field as the first edition of this work and the study of the Law of the Straits Settlements by Sir John Napier upon which it was based. All the legislative changes and the decisions of the Supreme Court and the Privy Council have been added and considered. To a large extent however the first half of this part of the commentary otherwise remains unchanged. It is a valuable and accurate general survey of the legal history and constitution of the Colony. The remaining half contains appendices of relevant Treaties, Acts, the Charter of Justice 1855 and

the various Letters Patent, although as to the latter we should have liked to have seen included the Letters Patent of 30th December, 1891, which are often of importance and a copy of which it is not easy to find. It also seems to us that, from the point of view of a practitioner, it is to be regretted that the list of English Statutes applicable to the Colony (formerly Appendix V) has been omitted in this very convenient form, though the various decisions are to be found in the text of this volume (pp. 66–68) and scattered throughout the second volume (*e.g.* p. 116).

The second volume forms really a new work, rendering unnecessary the former Appendix IV, and falls into three principal divisions. The first is a lucid commentary upon the Ordinances of the Colony and in particular upon their construction. The second comprises what Mr. Braddell describes as a digest of cases more than a commentary It does, however, go beyond this modest claim in so far as the author has not been content to copy and classify case headnotes, but has added a brief history of each subject and arranged and discussed the cases cited, some being unreported. To have thus placed within the reach of his readers these important unreported cases, available only through his memory and long experience, is in itself a great service rendered. The only criticism we have to offer is perhaps not strictly fair having regard to the preface, but we think it a matter for regret that the author of such a treatise as the present, the fruit of much labour and research, has spared no space for the discussion of the many important problems of the law of this Colony as yet unsettled. The third division of this volume is the appendix of the judgments of the Privy Council, upon appeals from this Colony, from 1875—1931. More than three hundred pages are devoted to these judgments, which differ from those appearing in the Law Reports only by the addition of marginal notes. Since these judgments cannot strictly be cited in Court, the object of their inclusion seems to have been to collect for the first time in one book all appeals from the Colony which have been reported. This Mr. Braddell has accurately done, but it is difficult to understand why these judgments were not merely digested and valuable space saved. Further, although the cases are indexed by title, there is no subject index. This must inevitably detract from their value since a long search is necessary unless the name of the particular case happens to be known. Again if, as not infrequently happens, it is not known whether a particular subject has been before the Privy Council upon any occasion, a search must be made through the whole appendix. This admittedly is shorter than having to consult all the Law Reports, but even with the present work it will take some time since the arrangement of the cases is chronological and the judgments reported in full. For these reasons we should have preferred either a subject or general index, or a digest of these cases arranged according to the branches of law with which they deal.

In conclusion we wish to congratulate Mr. Braddell on this excellent and learned commentary, which will be greatly appreciated by all practitioners, and all who are interested in the progress of this Colony.

The Carriage of Goods by Sea Ordinance, 1927. By Richard Williamson, Barrister-at-Law, and C. H. Withers-Payne, LL.D. (Lond.), Solicitor, 1931. ($5/- net).

The work of annotating an Ordinance bearing on which there have been so few local decisions is by no means simple and the authors have spared no pains in extracting from the mass of authorities relevant to the English Act upon which the Ordinance is based the best examples illustrative of the statutory provisions. The annotations are thorough and the arrangement is excellent. The numerous cross-references to a great extent increase the value of the work. The historical part of the subject has been dealt with in sufficient detail to assist the reader in a proper understanding of the Ordinance itself.

The volume under review contains amongst other things an interesting chapter on the conflict of laws in relation to the law of carriage of goods by sea.

The Carriage of Goods Act, 1924, and the Harter Act (U.S.) 1893 are added by way of Appendices. The index is compendious. We would recommend the work to the serious consideration not only of the busy practitioner but also of the shipper who is at one time or other involved in disputes as to carriage of goods by sea.